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March 29, 1954
Letter Opinion
No. 54-83-L

The Honorable Kel M. Fox
Arizona State Senate
Capitol Building
Phoenix, Arizona

LAW LIBRARY ARIZONA ATTORNEY GENERAL

Re: Interpretation of the term "mill
tax" as contained in Section 17-
1512, A.C.A. 1939.

Dear Senator Fox:

This is in response to your oral request for an opinion in which you ask our advice as to the meaning of the term "mill tax" as contained in Section 17-1512, A.C.A. 1939.

Section 17-1512, supra, states:

"17-1512. Tax levies--Bonds--County free library fund--Claims against fund.--The board of supervisors, after a county free library has been established, shall annually levy in the same manner and at the same time as other county taxes are levied, and in addition to all other taxes a mill tax sufficient to insure the payment of salaries, maintenance and upkeep and other necessary expenses of such county free library system; * * *. County bonds may be issued, in the manner now provided by law for the issuance of other county bonds, for the creation and equipment of county free library buildings and the purchase of land therefor. * * * All laws applicable to the collection of county taxes shall apply to the collection of the tax herein provided. All funds of the county free library, whether derived from taxation or otherwise, shall be in the custody of the county treasurer. They shall constitute a separate fund, called the County Free Library Fund, and shall not be used for any purpose except those of the county free library. Each claim against the county free library fund shall be authorized and approved by the county librarian or in his absence from the

county by his assistant. It shall then be acted upon in the same manner as are all other claims against the county." (Emphasis supplied)

An analysis of the underscored language used in the above section will be helpful in fully understanding our opinion. When the Legislature used the words "in the same manner and at the same time as other county taxes" they could have only had reference to the first eight articles of Chapter 73 of the Arizona Code of 1939, as amended, which provides how county taxes shall be levied.

Chapter 73 of the Arizona Code provides for an integrated "budget" system of uniform taxation, the budget system being mandatory on the counties unless otherwise provided by the Legislature. The type of taxation levied under the budget system can best be explained by reference to the statute authorizing the levy of taxes. Section 73-502, A.C.A. 1939, as amended, provides:

"73-502. Annual statement and estimate--
Publication and notice.--The governing board of each county, * * *, on or before the third Monday in July in each year, shall prepare a full and complete statement of the financial affairs of the preceding fiscal year and an estimate of the different amounts which will be required to meet the public expense for the current fiscal year, which shall include an estimate of the amount of money required for each item of expenditure necessary for county, * * * purposes, the amounts necessary to meet the interest and principal of any bonds, the items and amounts of every special levy provided by law and an amount for contingency or emergency not anticipated. The estimate shall be entered upon the minutes of the governing body and shall be fully itemized in accordance with forms which shall be furnished by the state tax commission showing under separate heads the amounts estimated to be required for each department, public office or official, for each public improvement, for the maintenance of public structures and institutions and the salaries of public officers, the separate amounts proposed for the construction, for the maintenance and for engineering and administration of public highways, roads, streets and bridges, and the amounts proposed

for the construction, operation and maintenance of each public utility subject to this article, and a full and complete disclosure and statement of the contemplated expenditures for the ensuing year showing the amount proposed to be expended from each separate fund and the total amount of proposed public expense. The estimate shall contain a statement of the receipts for the previous year from sources other than direct property taxation and the amounts estimated to be received during the current fiscal year from sources other than direct property taxation, the amounts actually levied and the amounts actually collected for county, * * * purposes upon the tax rolls of the previous fiscal year and the amount proposed to be raised by direct property taxation for the current fiscal year, for the general fund, the road fund, schools, bonds, special assessments, district levies, emergency levies and any other special levies specifically authorized by law. (Emphasis supplied)

In view of the type of taxation provided by the Legislature as explained in the statute quoted above, it will be seen that Section 17-1512, supra, would provide a valid tax for the purpose of a county free library without the word "mill" being used in the statute. In view of the budget system of taxation and the requirement in Section 17-1512, supra, that the budget system is mandatory, it will be seen that the use of the word "mill" provides no "rate" of taxation but the rate is to be "sufficient to insure the payment of salaries, maintenance and upkeep and other necessary expenses of such county free library".

In contrast with the budget system provided for in Section 73-502, supra, and incorporated in Section 17-1512, supra, compare Section 73-505(b), Code of 1939, 1953 Supp. when "mill" establishes a rate. Part (a) of Section 73-505(b) provides:

"73-505b. Public works reserve fund.--

(a) Each county, city or town, is authorized to establish and maintain a public works reserve fund for paying all or part of the cost of a program of local public improvements and betterments of public structures, highways, roads, streets, sewers, airfields and parks, water lines and devices for protection of property, including construction and reconstruction, additions thereto, and replacements

thereof, for execution by such county, city, or town, or by any public agency which such county, city or town is authorized to assist by any law. There may be included in the annual tax levy of such county, city or town, all other laws in conflict herewith notwithstanding, a tax of not exceeding two and one-half mills on the dollar of assessed valuation of the property within such county, city or town, except such as may be exempt, for the uses and purposes of the fund. All unexpended balances of appropriations from the fund remaining after the appropriations lapse according to law shall revert to the fund. The fund established pursuant to this act shall be kept separate and apart from all other funds."
(Emphasis supplied)

There are two important differences between section 73-505b, supra, and section 17-1512, supra, which will not only distinguish the two statutes but also substantiate the conclusion reached with regard to the "mill tax" in section 17-1512, supra. First, section 73-505b, supra, subsection (a), provides for a rate at two and a half (2-1/2) mills on the dollar, a rate which is not provided for in section 17-1512, supra, and secondly, there are no provisions in section 73-505b, supra, that require the tax to be levied "in the same manner" as all other county taxes are levied.

We hope that the above discussion has fully answered the questions you have on this matter, and if you feel additional information is necessary, do not hesitate to write.

Very truly yours,

RODERIC M. JENNINGS
Assistant to
The Attorney General

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